APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name:

   Maria Elena Cruz

2. Have you ever used or been known by any other name? __Yes__ If so, state name:

   Maria Elena Avino
   Maria Elena Cruz Avino

3. Office Address:

   1501 W. Washington St., Suite 302
   Phoenix, AZ 85007

4. How long have you lived in Arizona? What is your home zip code?

   I have lived in Arizona for 37 years.
   My home zip code is 85367.

5. Identify the county you reside in and the years of your residency.

I have resided in Yuma County for 32 years.

6. If nominated, will you be 30 years old before taking office? ☑ yes ☐no

   If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? ☑ yes ☐no

7. List your present and any former political party registrations and approximate dates of each:

   Democrat September 24, 2002 - present

   (The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Female**

   Race/Ethnicity: **Black Latina.**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

   University of Arizona
   James E. Rogers College of Law
   Tucson, Arizona
   8/1998-6/2001
   Degree earned: Juris Doctor

   University of Arizona
   Tucson, Arizona
   6/1996-7/1998
   Degree earned: Bachelor of Arts, Psychology

   Arizona Western College
   Yuma, Arizona
   8/1990-6/1991 & 8/1994-8/1995
   Degree earned: Associate of Arts, General Studies

10. List major and minor fields of study and extracurricular activities.

Undergraduate:

Major in Psychology
Member of the Phi Alpha Delta, Pre-law Fraternity.

Law School:

Juris Doctor Degree
Member of the Hispanic National Bar Association.
Member of the Black Law Students Association.
Member of the Law Women's Association.
Florence Immigration & Refugee Project, 1999-2000.
Defended incarcerated persons facing deportation proceedings.
Pima County Attorney's Office, 2000-2021.
Prosecution clinic pursuant to Arizona Rule of Supreme Court 38(e).
Prosecuted misdemeanor offenses.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

1990-1992
Worked part-time in restaurants and retail during my first years in college.

1992-1996
San Pasqual Elementary School
Teacher's Assistant and Projects Manager
As a Teacher's Assistant, I provided teachers support in the classroom by helping prepare materials, setting up equipment, and organizing the learning environment. I also worked directly with the students on assignments and provided supervision.
As a Projects Manager in this high-needs school, I determined which students were chronically absent and met with their families to determine what needs existed and what support we could provide. Support included taking the students to obtain clothing, shoes, and school supplies from a local American Legion, as well as transporting parents to appointments, and transporting children to school. I created incentive programs to motivate children to improve their attendance.
During this time I was on track to becoming a school teacher.

1996-1998
Worked part-time during last years of my undergraduate studies.

1999-2002
Pima County Attorney's Office
Law Clerk
Researched legal issues, drafted pleadings and assisted attorneys in their preparation for hearings and trials.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

- Supreme Court of the State of California, December 4, 2001.
- United States District Court, Southern District of California, March 12, 2002.
- Supreme Court of the State of Arizona, May 24, 2002.
- United States District Court, District of Arizona, April 6, 2005.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No** If so, explain.

b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No** If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Judge, Arizona Court of Appeals	**5/16/2017-Present**	**Phoenix, AZ**
Judge, Yuma County Superior Court	**01/01/2009-05/15/2017**	**Yuma, AZ**
Judge, Cocopah Indian Tribe	**09/01/2005-12/31/2008**	**Yuma, AZ**
Law Office of Maria Elena Cruz, PLLC	**01/01/2005-12/31/2008**	**Yuma, AZ**
Yuma County Legal Defender's Office	**06/01/2004-12/31/2004**	**Yuma, AZ**
Yuma County Attorney's Office	**05/14/2002-05/14/2004**	**Yuma, AZ**
Pima County Attorney's Office	**08/01/1999-03/31/2002**	**Tucson, AZ**

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Because I have been a judge since 2005, I have had no law partners or associates.

The following is a list of fellow judges on my current court, the Arizona Court of Appeals:

Div. I
David B. Gass
Randall M. Howe
Cynthia J. Bailey
Michael J. Brown
Jennifer B. Campbell
Michael S. Catlett
Kent E. Cattani
Anni Hill Foster
Brian Y. Furuya
Andrew M. Jacobs
Daniel J. Kiley
Paul J. McMurdie
James B. Morse Jr.
Angela K. Paton
Jennifer M. Perkins
Samuel Anderson Thumma
David D. Weinzweig
D. Steven Williams

Div. II
Christopher R. Staring
Karl C. Eppich
Sean E. Brearcliffe
Peter J. Eckerstrom
Jeffrey L. Sklar
Lacey Stover Gard
Christopher J. O'Neil
Michael F. Kelly
Garye L. Vasquez

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

I have not practiced law in the past five years. In the years prior to my judicial service, I represented defendants, some of whom were indigent, served as a deputy county prosecutor, judge pro tem for a tribal court, and civil attorney. My law practice was distributed approximately as follows:

Criminal Defense	**40%**
Criminal Prosecution	**20%**

Judge Pro Tem	**20%**
Family Law	**5%**
Civil	**10%**
Other	**5%**

17. List other areas of law in which you have practiced.

I appeared before the California Board of Parole Hearings and represented a client sentenced to life. The administrative proceeding resulted in his release.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

Not applicable.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

Every day as an appellate court judge I draft decisions, opinions and orders. Drafting requires negotiation, collaboration and sometimes disagreement with colleagues who I must also maintain professional working relationships. These decisions are often the final decision in cases that future litigators and defendants rely on as law. This requires great attention to detail and strong convictions when I deem it necessary to dissent with the majority opinion. My decisions range in subject matter from criminal to civil, tax to mental health, complex litigation and administrative matters such as unemployment compensation and medicare assistance.

My experience at the appellate court benefited from my time on the Yuma County Superior Court and a judge pro tem for the Cocopah Tribal Court where I drafted orders and decisions in civil cases, criminal cases (felonies and misdemeanors), child custody, dependencies and adoptions. Understanding the nuances of trial practice provided a great background for drafting decisions on the appellate court.

Additionally, as a criminal defense practitioner, I drafted various types of motions including: motions to obtain release from custody, challenge grand jury proceedings, seek disclosure of exculpatory evidence, suppress evidence at trial, and compel witness interviews.

In 2007, I was appointed by the Presiding Judge for Yuma County Superior Court to serve as an attorney representative on the Local Rules Committee.

Similar to the drafting, review and revision of court rules conducted by the Arizona Supreme Court, I reviewed and revised the Local Rules of Practice for Yuma County Superior Court.

In 2019, I served on the Arizona Supreme Court's Task Force on Delivery of Legal Services. As a member of the Task Force, I chaired the workgroup on Unbundling Legal Services and Alternative Business Solutions. Our Task Force was the first in the nation to expand law firm ownership to include non-lawyers. To that end, I led our workgroup in drafting proposed rule changes to Arizona Supreme Court Rule 42, Ethical Rule 1.2, in an effort to encourage the Arizona Supreme Court to allow for co-ownership of law firms by lawyers and non-lawyers. The proposed changes were largely adopted by the Arizona Supreme Court and became effective in January 2021.

In 2021, I participated in the Arizona Supreme Court Task Force on Criminal Rules Regarding Victims. We drafted proposed rule changes to incorporate victims' rights into the Arizona Rules of Criminal Procedure.

From 2018 to 2024, I served as Co-Chairman of the Arizona Committee on Rules of Evidence. I participated in the review and drafting of amendments to the Arizona Rules of Evidence. I co-sponsored nine evidence-related rule change petitions which were adopted by the Supreme Court.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes** If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

In 2006, I represented an inmate before the California Board of Parole Hearings. Although I rarely practiced in adversary proceedings before administrative boards or commissions during my years of practicing law, I now have extensive experience in reviewing administrative agency decisions and deciding appeals regarding the same. My current caseload includes appeals from the Arizona Department of Economic Security on unemployment benefits, food assistance, and medicare assistance and appeals from the Industrial Commission regarding workers' compensation.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: 1

Chief Counsel: 0

Associate Counsel: 0

21. Have you handled any matters that have been arbitrated or mediated? **Yes**
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: **20~**

Chief Counsel: 0

Associate Counsel: 0

As a solo practitioner, over almost four and a half years, I represented clients in approximately 300 criminal matters, many of which resulted in settlement. Preparation for settlement conferences often involved researching the client's past criminal history, interviewing lay witnesses, interviewing police officers and crime lab experts, speaking with family members, visiting crime scenes, and visiting my clients to discuss my findings, any plea offer extended by the State, the likelihood of success at trial, and the potential penalties in the event of a conviction. With this information my clients were able to meaningfully participate in settlement conferences which often led to negotiated plea agreements.

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

See attachment "Question 22"

23. Have you represented clients in litigation in Federal or state trial courts? **Yes**
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: **2**

State Courts of Record: **605**

Municipal/Justice Courts: **60**

The approximate percentage of those cases which have been:

Civil: **20%**

Criminal: **80%**

The approximate number of those cases in which you were:

Sole Counsel: **98%**

Chief Counsel: **0%**

Associate Counsel: **2%**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **20%**

You argued a motion described above **20%**

You made a contested court appearance (other than as set forth in the above response) **40%**

You negotiated a settlement: **98%**

The court rendered judgment after trial: **0%**

A jury rendered a verdict: **2%**

The number of cases you have taken to trial:

Limited jurisdiction court **3**

Superior court **9**

Federal district court **0**

Jury **9**

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? **Yes** If so, state:

In the Snyder case (see question 22), I represented my client in both the trial court and in a special action before the appellate court. I demonstrated that I have the skills to research the law and write a persuasive appellate brief that resulted in a published opinion.

I have spent the past 7.5 years as an appellate court judge in Arizona. My service as an appellate court judge has given me a firm foundation for the challenging work of an Arizona Supreme Court justice. As an appellate judge I read legal briefs in hotly contested cases where the answers are not always clear and the stakes are high for all parties involved, as well as our State.

As an appellate court judge I have decided more than 20 Administrative Law cases and issued over one hundred unemployment benefits review determinations.

The approximate number of your appeals which have been:

Civil: **N/A**

Criminal: **N/A**

Other: **N/A**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **N/A**

Personally in oral argument: **N/A**

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes** If so, identify the court, judge, and the dates of service and describe your role.

Pima County Superior Court
Judge Deborah Bernini, Summer 1999.
As a law clerk, I conducted legal research and drafted proposed orders on pending matters. I also observed Judge Bernini preside over a death penalty trial and gained her judicial perspective of the proceedings.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case:

(1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

See Question 26.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Arizona Court of Appeals, Division One
05/16/17-present Judge, appointed.

As an Arizona Court of Appeals judge, I sit on a 3-judge panel to hear and decide appeals in criminal cases, complex civil litigation, family cases, juvenile court cases, probate, and special actions, as well as rulings by the Industrial Commission, the Department of Economic Security unemployment compensation, and the Tax Court. As part of that process, I read the appellate briefs, research the law, supervise law clerks who assist in the drafting process, review and edit other judges' decisions, and draft memorandum decisions and publish opinions that serve as binding legal precedent for the state.

Serving as a judge on the Court of Appeals has twice given me the opportunity to sit by designation on the Arizona Supreme Court. In both instances I served in death penalty cases and reviewed all of the claims asserted to determine whether the convictions were lawfully obtained.

In addition to my regular duties as a jurist, I remain active within the legal community by volunteering to help mentor law students and young lawyers, I am involved in several professional organizations through which I provide various forms of public service.

Arizona Superior Court in Yuma County
03/25/16-05/15/17 Presiding Judge of Superior Court, appointed.

Presided over a criminal caseload (approximately 676 cases), while performing the administrative duties of Presiding Judge.

As Presiding Judge, I provided administrative oversight to the Superior Court in

Yuma County, including its Juvenile Court Division and the Adult Probation Department, as well as the Justice Courts and Municipal Courts. Presiding over Yuma County included determining case distribution among the various judges, supervising department heads, addressing employee grievances, and administering the court's multi-million-dollar budget. By order of the Arizona Supreme Court, I was also assigned, for a time, administrative oversight over the day-to-day operations of a local municipal court. During this period, I also presided over a six-victim death penalty trial. My time as Presiding Judge in Yuma County showcased my ability to effectively manage a large number of weighty responsibilities.

Arizona Superior Court in Yuma County
01/01/2010-05/15/17 Superior Court Judge, elected.

Presided over a criminal caseload (approximately 676 cases) and a family law caseload (approximately 173 cases).

In the criminal case assignment, I presided over 30 jury trials, one civil bench trial, numerous settlement conferences and probation violation proceedings, heard pre-trial motions, conducted evidentiary hearings, conditions of release hearings, entered changes of pleas, determined victim restitution, and met with community members to provide education on the role of the judge and functions of the judiciary within our system of government. In addition to all regularly assigned duties for a criminal division, I preside over specialty courts. Specifically, I oversaw a Drug Court, Restitution Court, and the SAFE Program. For part of this year I also presided over our Regional Mental Health Court.

I established Restitution Court in Yuma County in November 2013. Since its inception, Restitution Court has recovered approximately $300,000.00 in restitution for victims of criminal offenses in our community.

In the family law case assignment, I conducted over 100 bench trials, participated in settlement conferences, heard pre-trial motions, and ruled on issues of legal decision-making, parenting time, child support, and division of community property.

As an elected judge, I had to gain the confidence of my community who ultimately elected me but also maintain impartiality as those constituents came into my court. My impartiality was tested when same-sex marriage became legal in our state. Two justices of the peace who typically officiated weddings in the courthouse refused to officiate over same-sex marriages. The Presiding Judge said there would be no more weddings in the courthouse. I had to stand up to for the law and, regardless of the threat of potential backlash at the polls, I officiated over the first same-sex wedding in our county. I always said that any decision I made could be the beginning of the end. A good judge should always be faithful to the law no matter the personal risk.

Arizona Superior Court in Yuma County
01/01/2009-12/31/2009 Juvenile Court Division Judge, elected.

Presided primarily over juvenile delinquency contested matters, including non-jury trials. Conducted two dependency hearings and finalized approximately ten adoptions.

Cocopah Indian Tribe, Tribal Court
2005-2008 Judge Pro Tem

Presided over civil, criminal, child custody, and adoption matters. Officiated weddings and official tribal events. Given the Tribe's low population, I carried a caseload of about 20 matters per week. I worked as a tribal judicial officer while maintaining my full-time criminal defense practice.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

See Question 28.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

During my time as a trial court judge, I endeavored to serve my community in ways that met its needs. For example, soon after my election to the Yuma County Superior Court, I volunteered to serve as a Drug Court Judge. Drug Courts are therapeutic courts designed to help criminal defendants with substance dependency issues to recover from their addiction with the added goal of reducing their likelihood of reoffending.

In this assignment I supervised the progress of over 100 participants. They came to court at weekly or bi-monthly intervals for progress updates. I closely tracked each participant's progress in their sobriety, therapy sessions, community service, employment and the rebuilding of family relationships. I motivated them to change by establishing rapport, encouraging introspection, ordering appropriate professional intervention, and showing a personal interest in their unique situations.

From my successes in Drug Court the then-Presiding Judge asked me to manage

a new court program, S.A.F.E. S.A.F.E stands for Swift, Accountable, Fair, Enforcement and the goal is to address substance abuse and minor violations of probation in an expedited manner so that consequences and encouragement came almost immediately after each violation. There again my strong interpersonal skills allowed me to connect with probationers and show them that the court is interested in doing more than shuttling them through a process for a fixed term and moving them out of the system. Instead, the court is interested in their long-term success, reintegration into the community, and healing for any victims of their crimes.

Having demonstrated an aptitude for working in therapeutic courts, I started Yuma County's first Restitution Court. Restitution Court is a program that started in Maricopa County Superior Court. With the assistance of the Adult Probation Department, probationers who have failed to pay criminal restitution as ordered are brought before the court to troubleshoot, identify the cause of the failure to pay, and identify solutions to gain compliance. Solutions are tailored to the circumstances of each case. In some instances, a modification in monthly payment amount may be warranted. Other times a judgment may be more appropriate. The Restitution Court judge addresses the failures to pay court-ordered criminal restitution of various probationers in one separate calendar. Just as I did with Drug Court in prior years, I encouraged defendants to see probation and Restitution Court as tools to learn to organize their lives such that when they left probation, they had gained the ability to successfully manage their lives and their personal finances.

Twelve months from its inception, many probationers felt engaged and empowered to take control of their finances. They made efforts to obtain or retain employment, to pay their court-ordered restitution, and to be successfully discharged from probation. By then, the Restitution Court in Yuma had also collected thousands of dollars in restitution owed to victims. The Restitution Court model worked so well in Yuma that I had to help promote it to the rest of the State.

As a member of Arizona Supreme Court's Commission on Victims in the Courts, I was uniquely positioned to promote the Restitution Court model to judges across the State. First, I headed a workgroup tasked with developing a Restitution Bench Book such that any superior court judge could use it as a guide in holding Restitution Court hearings. Once the Restitution Bench Book was completed, I requested the Chief Justice include in the five-year strategic agenda a goal that there be a Restitution Court in every county of our state.

Today we are in the implementation phase of the plan. Four of the 15 counties in our state have Restitution Courts. I will work directly with the remaining trial courts to ensure that within the next two years every county in Arizona has started its own Restitution Court.

My time as a trial judge in Yuma County was valuable in that it helped me hone my skills as a jurist while also helping address the most pressing issues in our community, such as substance dependence, rehabilitation of individuals, restitution of economic loss to victims, and protection of the community.

Another opportunity to serve my community came when I was assigned to preside over a death penalty case in Yuma, the *State v. Preston Alton Strong* case. The *Strong* case, aside from dealing with multiple victims of various ages, also included DNA and fingerprint evidence, as well as cell phone tower geolocation evidence. In the middle of trial one of the parties alleged a news reporter was improperly interfering with prospective witnesses and I conducted an evidentiary hearing to determine the basis for the complaint. In that inquiry I had to entertain questions of the media's first amendment rights and ruled that there were insufficient grounds to compel the reporter to disclose their sources of information, or whom they had interviewed in connection with the trial. The case trial management skills I learned in managing this multi-victim case were perfectly tailored to ready me for later siting on the Arizona Supreme Court in two subsequent death penalty cases.

While hard at work as a superior court judge, in 2013 my alma matter reached out to invite me to teach a course in basic trial skills in Mexico City. In 2008, the Republic of Mexico underwent a series of a constitutional changes that required oral adversarial trials. The University of Arizona College of Law partnered with the Universidad Nacional Autonoma de Mexico to teach a group of criminal law practitioners the skills necessary to conduct an oral trial.

The program needed a Spanish-speaking judge and the College reached out to me. I accepted the challenge and embarked on an experience that has been incredibly rewarding. Since 2013, I am regularly invited to travel to various parts of the Republic of Mexico to teach. There I work with prosecutors and defense counsel, investigators, and forensic experts in improving their trial skills. This work is one manner in which I help promote justice and confidence in the judiciary.

In 2015, the Chief Justice of the Arizona Supreme Court appointed me as Presiding Judge of Yuma County and a new type of work began. There are 15 Presiding Judges in Arizona, one for each county. They are responsible for the administration of all the courts within the boundaries of their respective county. During my tenure as Presiding Judge I maintained a criminal and family caseload while also carrying out the administrative duties of the Presiding Judge. I had many administrative challenges to address beginning on day one of my assignment. The most pressing was taking over the administrative duties of one of the municipal courts.

Reorganization of key staff, financial audits, and direct collaboration with the Arizona Supreme Court's administrative department helped me bring this court into compliance with statutory and regulatory requirements. While these corrective measures were being implemented, I had to ensure that the court remained open for business. I had to work with the City Administrative team to ensure that a judge pro tem was hired to cover hearings. With the help of the Administrative Office of Courts and my Court Administrator, we brought that failing court into compliance. Other administrative successes included restructuring the pay scale for superior court commissioners. The system I implemented gave raises in a staggered based on merit and years of service. At the same time, I worked on improving IT systems, chambers processes, and security. It was a heavy but necessary lift.

I had been hard at work as Presiding Judge for less than two years when community members encouraged me to apply to fill a vacancy on the Court of Appeals. In their words, my good judgment would prove useful as Yuma's representative on the Court of Appeals. Seven years later I believe I am still serving my state well. Now I am humbled as my community encourages me to serve the State of Arizona as a member of its highest court.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No** If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

    Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not applicable.** If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes** If not, explain.

33. Have you paid all state, federal and local taxes when due? **Yes** If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? **No** If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **Yes** If so, identify the nature of the case, your role, the court, and the ultimate disposition.

I was the defendant in a personal injury lawsuit resulting from a vehicular collision occurring around 1994. The plaintiff was the driver of an oversized farm tractor. Soon after the collision I reached a settlement agreement with the tractor driver's insurance carrier. Later, the driver filed a lawsuit against me in a Tribal Court. Neither the driver, nor I were tribal members and the Tribe was not a party to the lawsuit. The matter was dismissed for lack of jurisdiction over either party.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No** If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No** If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? **No** If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No**

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. **Not applicable.**

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not applicable.**

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

None.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

None.

44. List and describe any sanctions imposed upon you by any court.

None.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No** If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No** If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **Yes** If so, list with the citations and dates.

D. Smith, C. Campbell, and B. Kavannagh. Trends in State Courts 2017. Article: *Arizona's Task Force on Fair Justice for All,* p. 48

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes** If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes** If so, describe.

2020-Present
Council of Western Attorneys General:
Interdisciplinary Exchanges
Mock Trial Competitions
Various cities within the Mexican Republic and the United States

2018 Making the System Work: Using Victim Advocacy Clinics and Institutionalized Trainings to Promote Competency and Confidence in

Mexican Justice Reforms: Voz de las Víctimas. Tecnológico de Monterrey and Arizona State University, Sandra Day O'Connor College of Law Collaboration. Trial Advocacy Instructor.

2017 Arizona Judicial Conference, Fair Justice Opening Plenary. Panelist.

2017 Arizona Judicial Conference, Victims in the Courts Course. Faculty.

2017 Arizona Judicial Conference, Animal Cruelty Course. Faculty.

2017 Annual State Bar of Arizona Convention, Fair Justice for All—Avoiding Disparate Penalties While Serving and Protecting the Public. Panelist.

2016 Arizona Leadership Conference, "Justice for All in Arizona… A review of the Recommendations of Arizona's Fair Justice Task Force: Changing the Way Business is Done." Panelist.

2016 Arizona Judicial Conference, Panel Presenter. "The Ethical Parameters of Judges' Involvement in Politics."

2016 Annual State Bar of Arizona Convention, "So You Want to Be a Judge." Panelist.

2016 Annual State Bar of Arizona Convention, "Options for Delinquent Youths and Tips from the Bench." Panelist.

2016 Annual State Bar of Arizona Convention, Panel Presenter. "Exceed Your Expectations: Essential Skills for Success in Life and Family Law Practice."

2016 National Association of Drug Court Professionals Trainer in Mexico City, MX

2014 "Maestría en Litigación Oral (L.L.M.)," San Diego, California, (Masters in Oral Litigation), sponsored by California Western School of Law. 12/4/2014. Lecturer/Instructor.

2014 "Congreso Internacional del Juicio Oral," Tijuana, Baja California, Mexico (International Congress on Oral Trials), sponsored by PACCJO and PantaRei. Lecturer/Instructor.

2014 "Formación de Formadores," Guanajuato, Mexico, (Training the Trainers). 1/13-17/2013. Lecturer/Instructor.

2013 "Taller de Litigación," Mexico Distrito Federal (Litigation Workshop),

sponsored by the National Law Center for Inter-American Trade, Universidad Nacional Autónoma de Mexico, and the United States Embassy in Mexico City. Lecturer/Instructor.

2013 "Juicio Oral Civil & Mercantil: Un Curso Teórico-Práctico," San Diego, California, (Civil and Commercial Oral Trials: A Course Focused on Theory and Practice), sponsored by California Western School of Law and National Law Center for Inter-American Trade. 8/24/2013. Lecturer/Instructor.

2013 Arizona Problem Solving Courts Conference, "Rural Successes by Thinking Outside the Box." Panel Presenter.

2010 Arizona Western College Guest Lecturer

2008 "62da Jornada Informativa del IME: Jueces y Funcionarios del Sistema de Justicia en Estados Unidos" (62nd Informative Workshop by the Institute of Mexicans in the Exterior: Judges and Public Officials in the United States Justice System). Invitee.

53. List memberships and activities in professional organizations, including offices held and dates.

American Law Institute
2020-Present, Member

Arizona Judges Association
2009-present, Member
2014-2015, President
2013-2014, Vice President
2012-2013, Secretary
2011-2012, Treasurer
2009-2011, Rural Judges' Representative

Arizona Women Lawyers' Association
2017-Present, Member

Arizona Black Bar
2020-Present, Member

Black Law Students Association
1999-2001, Law Student Member

Hispanic National Bar Association
1999-2001, Law Student Member
2017-present, Member

Latina Mentoring Project
2017-Present, Member & Mentor

Law Womens' Association
1998-2001, Law Student Member

Los Abogados
2011-Present, Member

Yuma County Bar Association
2002-2004, 2012, 2019-Present Member

Yuma County Judicial Selection Committee
2005-2016; 2019-Present, Member

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes**

2024 State Bar of Arizona, Bar Convention Plenary Session Workgroup Member
2023 State Bar of Arizona, Bar Convention Evidence Law Update Panelist
2023 State Bar of Arizona, Bar Convention Ethics Game Show Panelist
2023 State Bar of Arizona, CLE by the Sea, Presenter on Special Actions
2023 State Bar of Arizona, Bar Convention Events Committee Member
2022 State Bar of Arizona, Civil Practice & Procedure Symposium Panelist
2022 State Bar of Arizona, Bar Convention Evidence Law Update Panelist
2022 State Bar of Arizona, Bar Convention Events Committee Member
2021 State Bar of Arizona, Bar Convention Ethics Game Show Panelist
2021 State Bar of Arizona, Bar Convention Evidence Law Update Panelist
2021 State Bar of Arizona, Bar Convention Events Committee Member
2020 State Bar of Arizona, Bar Convention Evidence Law Update Panelist
2020 State Bar of Arizona, Bar Convention Events Committee Member
2019 State Bar of Arizona, Bar Convention Co-Chair.
2018 State Bar of Arizona, Bar Leadership Institute. "Meet the Bench." Panelist.

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

2017-Present Judicial and Attorney Engagement Workgroup. Coordinate pro bono opportunities for Arizona judges and attorneys. Member.

54. Describe the nature and dates of any relevant community or public service you have performed.

2024	**Arizona Supreme Court, Legal Futures Program, Yuma, AZ. Master of Ceremonies and Presenter**
2023	**Arizona Supreme Court, Legal Futures Program, Yuma, AZ. Master of Ceremonies and Presenter**
2023	**Vice Chief Justice Timmer's Strategic Agenda Subcommittee, Member**
2021-2023	**Restitution Court Bench Book Workgroup, Member**
2018-2021	**Task Force on Delivery of Legal Services, Member and Workgroup Leader**
2018-2023	**Advisory Committee on Rules of Evidence, Co-Chair**
2015-2021	**Arizona Supreme Court Commission on Access to Justice, Member**
2020-Present	**JPR Conference Team, Volunteer**
2015-Present	**Arizona Supreme Court Commission on Victims in the Courts, Member**
2014-2015	**Arizona Supreme Court Special Code of Judicial Conduct Workgroup**
2014-2015	**Arizona Judges Association, President**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

2024 Attorney General Distinguished Service Leadership Award

2015 Recipient, Recognition Award for Collaboration with ACCESO Capacitación, PantaRei and PACCJO for the consistent support of continuing legal education in the State of Baja California, Mexico.

2012 Recipient, Class of 2012 Award for efforts to help empower the PPEP-

YouthBuild AmeriCorps students to become productive citizens, community service advocates, and future leaders in their communities.

2010 Nominee for the "Heart of Yuma" Award, for bringing the Juvenile Court Mock Sentencing Program to local High Schools and thereby promoting prevention and awareness in youth drug trafficking.

1997 National Mock Trial Competition, Phi Alpha Delta Pre-Law. First Place Team Competition.

1997 National Mock Trial Competition, Phi Alpha Delta Pre-Law. Most Outstanding Defense Attorney for Cross Examinations.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

2009-2017 Arizona Superior Court Judge, Yuma County
2017-present Arizona Court of Appeals Judge

Have you ever been removed or resigned from office before your term expired? **No** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes** If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

My primary interest outside the practice of law is my family. My husband Glen and I look forward to celebrating 28 years of marriage in March. Together we are primarily focused on offering advice to our adult children Diego and Sofia. In Yuma, we attend the same parish our family has attended for two generations.

I enjoy running so much that I run a 5k a day! In 2013 I ran 13 half-marathons. I also enjoy outdoor sports like hiking and kayaking, and traveling, reading, dancing and singing.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge

with or without a reasonable accommodation in the court for which you are applying? **Yes**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

My mother was born in the Dominican Republic under poor conditions, even by that third world country's own standards. And as a young child she knew nothing about the world outside of her family's poor farm, but she had hopes that she could one day leave, work hard, and help provide for her parents and 15 siblings. At 14 years of age, she took the first opportunity to go to the city and work as a housekeeper. Then, by age 20 she was on her way to New York City to work in the garment industry. She was a hard worker and a blessing to her family.

My father was born in Puerto Rico. He too was born to poverty but with great hope and a strong work ethic. His drive led him to New York City, where he met my mother and I was born. They are the greatest example of bravery and resilience I know. They instilled in me core values of hard work and tenacity.

At an early age I moved to Puerto Rico, but my parents' need for financial security brought us to Yuma and that's where my real story began.

My native language is Spanish, and I read and write it proficiently. When I arrived in Yuma, I entered the school system as an "English language learner." Within two years I was proficient in the English language and my teachers encouraged me to seek leadership positions within school organizations.

While I strived to learn the language and culture of my new community I struggled with a contradictory family core value. That is because I was born into a conservative religious discipline where we were taught to respect government, without participating in it. Higher education was discouraged, especially for women. Early in my young adult life, I moved away from that religion and, though

I hold on to the good I learned from it, I am defined by completely different values. My community extends beyond the boundaries of my nuclear family and my church family. My community now includes the community in which I reside, which is my town, state, and country.

As I matured my desire to be of service to others grew. I started assistant teaching at an elementary school where resources were scarce, and needs were high. Although the work was challenging, I found a special personal fulfillment in knowing that the work I was doing was important. I often reminded myself that I could easily be the best thing that happened to one of my students on any given day.

Then, one day on my way to work I was involved in a serious collision with a farm tractor. I braced myself for death as the tractor's tiller opened my compact car like a can of tuna on the driver's side from front to back. It is a miracle that I survived. I was unconscious for a moment and the other driver thought I was dead.

Coming out of that experience I realized that life could end at any moment. I asked myself, "if I could do anything at all with my life going forward, what would I do?" For the first time I gave myself permission to dream big and outside the lingering limitations of my religious upbringing. No dream was too great. After meeting with a lawyer for the first time to discuss my accident, I gave myself permission to dream about being a lawyer. It is as though I was letting the courage shown by my parents in their youth shine through me. I decided I would become a lawyer.

I saw a career in the law as the opportunity to be of service to people in their greatest moment of need. In law school I participated in the prosecution clinic and felt great satisfaction at thinking of myself as a person who helped further peace and justice. After law school in Tucson, I returned to my hometown with my husband to work and raise our family. Fellow prosecutors often remarked that the best prosecutors were those with defense experience. So, I decided to get that experience. In my first group of indigent defense cases I represented a young man who was actually innocent from the charges, a case of mistaken identity. I could not believe how easily a person could be convicted on mistaken information. It was disappointing to see, but a lesson I needed to learn and one which would help shape me for the judicial career I did not know would eventually come.

Soon after starting my solo practice with an emphasis on criminal defense, the Cocopah Indian Tribe contracted me to be their Judge Pro Tem. It was an honor I will never forget. There I learned the skills needed to be the neutral party, to judge according to the applicable law, and to weigh the credibility of witnesses.

Four years later I was encouraged and asked to run for Yuma County Superior Court judge. In 2008, I ran in a hotly contested race and won. Yuma County gave me the opportunity to serve as their superior court judge. I served for almost nine years with the last two being as the Presiding Judge of Yuma County.

That same community later supported me on? the road to the Court of Appeals appointment. Now I sit as a rural county appointee, and I stay connected to my hometown by continuing to I serve as their Judge Pro Tem. Once a month I return to my old courthouse and preside over Restitution Court cases. It keeps me connected to my community and keeps my perspective on rural living fresh. And that is also what the Court of Appeals needs from me.

Some community members I once sentenced to prison or represented as their defense attorney will ask if I remember them, only to share how they have turned their lives around since they last saw me. I've even been introduced to their new spouses and babies. Prior Drug Court participants, now sober, smile at me when I see them working around the city and I can't help but remember all the work we did together to get to that point. My fellow Yuma High School classmates and old teachers enjoy joking about my change from Yuma High "Criminal" (our mascot) to Yuma Judge and now Appellate Court Judge. I am no longer just observing society. My community is continuously expanding. I now serve a broader demographic and strive to serve my entire state. My career in the judiciary is my service to my community and my contribution to my country.

So, aside from 20 years of judging experience, what diversity do I offer? I offer diversity of geography, gender, race, culture, socio-economic upbringing, criminal defense perspectives, and life experience to the Arizona Supreme Court.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

I hail from a rural county. The State of Arizona is vast and beautifully diverse. It is the Grand Canyon, snowy mountains, rivers, and high- and low-elevation deserts. There are two densely-populated cities with population counts in the millions, and the remaining 13 counties are primarily made up of rural cities and towns, both large and small. The Arizona Supreme Court is losing its only rural county justice. All remaining justices are from Maricopa County. I am seeking a seat on the highest court because rural county representation is important.

The Arizona Supreme Court is responsible for more than the important task of deciding appeals that come before it. The highest court is also in charge of the administration of the judicial branch of the state, including the limited jurisdiction courts, trial courts, court of appeals, adult probation, information technology, and juvenile justice services. In fulfilling this critical administrative function, it is

important that the Supreme Court have at least one justice who is not from Maricopa County and who understands what makes rural counties different from Phoenix.

During my 20 years as a judicial officer, I have served on the tribal bench, the superior court bench, and the appellate court. I have also sat by designation on the Arizona Supreme Court in two cases where Supreme Court justices had recused from participating. I have presided over juvenile matters, family court, civil calendars, criminal calendars, probate, appellate tax cases, and administrative law matters. Even as I serve on the Court of Appeals in Maricopa County, I remain connected to my rural roots by serving as Judge Pro Tem on the Yuma County Superior Court once a month. I am a resident of Yuma County and fully participate in my community. I have family in Yuma and care to ensure that rural communities have the resources necessary to carry out their judicial functions.

Our supreme court currently includes justices who practiced in various areas of the law prior to their appointments. However, prior service and experience in criminal defense is grossly lacking. A large number of the cases the Arizona Supreme Court reviews every year are criminal convictions. In fact, during my time on the Court of Appeals more than half of the 1,383 cases I've decided are criminal matters. The American system of criminal justice only works well when balance between defense and prosecution is maintained. It is critical that someone with criminal defense experience, who understands the human element of a criminal case, be among the group of people who routinely review and decide the legality of convictions in our state.

The Arizona Constitution requires that diversity be considered in the selection of judicial officers. With two women out of seven justices, our Supreme Court lacks the gender diversity it should naturally reflect. Since the inception of our State, women have been consistently underrepresented on the highest court. Confidence in our judiciary begins with confidence in the selection of our judicial officers. The citizenry should look at the Arizona Supreme Court and see that it is comprised of a balanced number of women and men. Also, in a state with such a high Latino population, it is fitting that its people see the first Latina and woman of color on our Supreme Court. Increased racial diversity on the Arizona Supreme Court will not only encourage confidence in the work of the Supreme Court. It will also improve outcomes. These are the primary reasons why I am seeking this position.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? __**Yes.**__ If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

See attachment A.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See attachment (B and C). It includes two professional writing samples from nearly 20 years ago, when I served as defense counsel.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See attachment (D and a new sample for E). It includes a sample of orders I wrote in earlier years, while on the trial court bench, as well as a sample from my time on the Court of Appeals.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

I am currently a judicial officer and have gone through two judicial performance reviews. See attachment (F).

-- INSERT PAGE BREAK HERE TO START SECTION II

Arizona Supreme Court Judicial Vacancy Application
Maria Elena Cruz

ATTACHMENT "A"

62. Attach a brief statement explaining why you are seeking this position.

From the first time I announced my name as counsel for one of the parties, to the first time a bailiff announced my name as the judge in my courtroom, my work as a public servant has been purposeful, meaningful, and gratifying. My career in law has been a tool for serving the people of my town and my state. Whether it be as a prosecutor, defense counsel, or judge, every case I have touched has been of significance. I am passionate about my work because I know it has real consequences for real people. And being part of that process is a privilege. It is has been truly a privilege to know that my fellow citizens have placed such high confidence on my judgment and legal abilities. That is the reason why when I have been called to serve in roles of increasing judicial responsibility my answer has always been a resounding YES.

I have presided over almost every type of case seen in a state court, at every level. From misdemeanors in tribal court, to family cases and death penalty matters in the superior court, my experience is broad. I have used my judicial power to implement court programs that helped improve the lives of people, their families, and their communities. These programs have helped those who have become involved with the justice system to overcome challenges and access resources.

At this moment, I am now working in earnest on court projects to help rebuild the public's trust in the judiciary, provide compensation to victims, and provide access to the courts. A seat on the Arizona Supreme Court will only help to amplify my voice in promoting these worthy projects.

Citizens of our state and country are increasingly losing faith in the work the courts do. And many of them do not even fully understand what it is that we do. I am grateful to have been selected by the Arizona Supreme Court to be the voice that speaks to everyday people about the work of the court. What started as a joke, "the judicial influencer," is now a serious project that embraces the opportunity to communicate with the public in the spaces where they currently meet, the new town square, also known as social media. There we will talk about cases of high interest, court resources, and the work of the courts all around Arizona. We will raise awareness about the good things that courts do to assist litigants and help them understand how they can navigate the court system and have their matters fully heard.

Another way to help rebuild trust in the judiciary is to help victims obtain the financial compensation they have been ordered to receive. Through statewide expansion of the Restitution Court model that I implemented in Yuma County ten years ago more probationers will pay the restitution owed and feel the satisfaction of having made whole the person they had once aggrieved.

Finally, I will continue to promote efforts such as the increase in Legal Paraprofessionals (LP) throughout our state. LPs are people certified by the Arizona Supreme Court to practice law in a discrete area. As the number of LPs grows, they will become a realistic option for affordable legal representation. The ability to have their case fully heard with the representation of a skilled LP they can afford will help improve the people's perceptions of our judicial system.

There is much good work yet to be done and I am ready to use a position as Justice on the Arizona Supreme Court as the ideal platform to do it.

Arizona Supreme Court Judicial Vacancy Application
Maria Elena Cruz

ATTACHMENT "B"

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT FACTS:

On the 6th day of September, 2007, was indicted by the Yuma Count Grand Jury, on the following charges:

Count One: Prisoners Who Commit Assault with Intent to Incite Riot or Participate in Riot, Cou Two: Riot, and Count Three: Criminal Damage.

A copy of the Indictment is attached as Exhibit "A" hereto and made a part hereof.

LAW:

I. THE DEFENDANT WAS DENIED A SUBSTANTIAL PROCEDURAL RIGH WHEN THE INSTANT CASE WAS PRESENTED BEFORE THE Grand Jury.

Rule 12.9(a) of the Arizona Rules of Criminal Procedure provide that Grand Jur proceedings may be challenged when the defendant in a criminal action has been denied substantial procedural right.

A review of the Grand Jury transcript, a copy of which is attached hereto marked Exhibit "B and made a part hereof, is lacking facts to support all the elements of each of the crimes charged i the three counts of the indictment or the elements of criminal liability based upon conduct of anoth as defined in A.R.S. § 13-303.

A. Sufficiency of the Evidence or No Evidence At All

Rule 12.9, recognized that the work of the Grand Jury and any resulting Indictment may b challenged on the basis of failure of due process. What constitutes denial of a substantial procedur right is not delineated by Rule 12.9, and we are left to prior case law and this Court's discretion.

The case of Preimsberg v. Rosenblatt, 112 Ariz. 461, 543 P.2d 773 (1975) holds at 112 Ari 462:

> [t]here was no intention in the adoption of Rule 16.7 to change the long established rule that an indictment valid on its face is not subject to challenge on the ground that the Grand Jury acted on the basis of inadequate or incompetent evidence. United States v. Colandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956), Holt v. United States, 218 U.S. 245, 31 S.Ct. 2, 54 L.Ed. 1021 (1910). A

> trial court has no power to inquire into or weigh the legal sufficiency of the evidence presented to the Grand Jury from which an indictment resulted.

There is a distinction between sufficiency or competency of evidence and a case of n evidence at all. The concept of no evidence at all was recognized by the U. S. Supreme Court i Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654 (1960). Therein, th Court concluded that a state violates a defendant's constitutional due process right when it convict the defendant of a crime without evidence to support an essential element of the crime. Also se Vachon v. New Hampshire, 414 U.S. 478, 480, 94 S.Ct. 664, 38 L.Ed. 2d 666 (1974); Harris v United States, 404 U.S. 1232, 1233, 92 S.Ct. 10, 30 L.Ed. 2d 25 (1971); Spencer v. Jago, 603 F.2 1208 (1978) 6th Cir.

The application of the "no evidence at all" principle to Grand Jury proceedings as the basi to quash, dismiss or remand an indictment has been recognized by the Ninth Circuit Court c Appeals. United States v. Romero, 505 F.2d 391 9th Cir.(1978) and United States v. Vargas, 607 F 2d. 831 9th Cir. (1979). In the Romero, 585 F.2d at 398, the court stated:

> [w]e agree with The District Court's statement that '(a)lthough a complete absence of evidence might serve to invalidate an indictment, see Costello v. United States, *supra* at 364, 76 S.Ct. 406 (Burton, J. concurring) and United States v. Tance, 329 F.2d 848, 853-54 (2d Cir. 1964), we do not find a complete absence of competent evidence here.' Further, it is well established that a Grand Jury may return an indictment based solely upon hearsay evidence. Costello *supra*.

The Arizona Supreme Court in Preimsburg, *supra* and the 9th Circuit in Romero, *supra* bot cite to Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956) as authority. Th clearly distinguishing factor is "no evidence at all" vs. "sufficiency or competency of the evidence. The common factor is there was some evidence to support the Grand Jury decision and therefore th motion was rejected.

The Court should not substitute its judgment for that of a duly empaneled Grand Jury or an other judicial or quasi judicial body. However, this rule does not apply in where there is no evidenc upon which the judicial or quasi judicial body based its decision. The total lack of evidence is violation of the constitutional right to due process.

B. Lack of Evidence for Crimes Charged

In this case there was no evidence at all presented to the Grand Jury to show that participated in inciting a riot or participated in a riot as set forth in Counts I and II. I order for there to be a riot, there must be a disturbance of the public peace. "Public" is defined i A.R.S. § 13-2901 (2) as follows: " 'Public' mean affecting or likely to affect a substantial group c persons". It is submitted that the acts must also be committed in a public place in order for th "public" peace to be disturbed. It is generally viewed that this section of the criminal code applie to disorderly demonstrations which threaten harm and exceed the limits of free expression. Se Criminal Law of Arizona 2nd Edition, Honorable Rudolph J. Gerber, Court of Appeals of Arizon Chapter 29.

The facts of this case show that approximately 18 male inmates while locked in their cell in units Red 1 and Red 2 damaged windows and sprinkler heads and flooded their cells by stuffin paper or rags and flushing. All 18 Defendants are charged with criminal damage. Criminal damag was removed as a basis of rioting when former A.R.S. § 13-631 now § 13-2903 was recodified i 1978. Hence the damage to the cells by each inmate cannot be the basis of a riot even if done i concert. There was no public demonstration as this occurred while each individual Defendant wa locked in his own separate locked cell. He could not threaten violence or threaten to use forc accompanied by the **immediate power of execution**, a required element of the crime of riot. Give the fact that the Defendant and other inmates were locked in their individual cells, there was n power of execution, and therefore and inability to participate in a riot.

i. Count One

In Count One, it is alleged Mr. committed assault upon five Detention Officers, y the Grand Jury testimony of Detective was that "Detention Officer 's report ju stated that they entered the cell, handcuffed him, an exited the cell." (Exhibit B, p. 67, ll. 12-13 Det. Avenetti went on to testify, "Officer Rangel reported that inmate **refused to cuff u without a fight.** D.O. Rangel said –stated that they entered the room, they struggled to contr and finally restrained him and he was moved out– moved out to another room." (Exhibit I p. 67, ll. 15-19). By the Detective's own testimony, it is impossible to support the charge that M **engaged** in assaultive behavior against the six named officers. Assuming arguendo there wa

a riot, there is no evidence at all of an assault occurring while the inmates were allegedly wer rioting. In fact, the extractions from the individual inmate cells occurred some considerable tim after the damage to the windows, or alleged altercation.

ii. Count Two

A to Count Two, there is no evidence of specific intent to injure, nor scare, any detentio officer. Mr. was in a locked cell. The officers initiated the contact by going into Mr. cell. Assault is a specific intent crime. There was no evidence presented that this Defendant ha any specific intent to assault or from which the Grand Jury could infer a specific intent to assault an officer. As previously stated, the reports from the detention officers support Mr. ' account tha there was not aggression on Mr. ' part.

iii. Count Three

As to Count Three, there was no evidence presented of this Defendant doing damage to an cell other than his own. Counsel is not aware of any theory or principle of law in which the state ca add together property damage committed by single individuals in distinctly separate locations bein aggregated in value to reach felony levels. Even if the state can prove that each Defendant was a aider and abettor of each of the other inmates, there is nothing to allow the damage in each case t be aggregated to one total. This is permitted in the theft/check cases where the statute specificall provides for it. See A.R.S. § 13-1801(B) which states in regard to Chapter 18 Theft that:

> In determining the classification of the offense, the state may aggregate in the indictment or information amounts taken in thefts committed pursuant to one scheme or course of conduct, whether the amounts were taken from one or several persons.

There is no such corresponding provision in Chapter 16 of the Arizona Criminal Code. A most, the State might prove 18 misdemeanors and they haven't even presented any evidence of valu of damage to each cell to the Grand Jury, but rather a guess with no basis, not even hearsay.

II. <u>The Grand Jury Function and the Prosecutor's Role in the Grand Jury Proceeding</u>

The Supreme Court has described the Grand Jury as "a primary security to the indictmen against hasty, malicious and oppressive persecution; it serves the invaluable function in our societ of standing between the accuser and the accused...to determine whether a charge is founded upo

reason or was dictated by an intimidating power or by malice or ill will." Wood v. Georgia, 370 U.S 375, 390, 8 L.Ed 2d. 569, 82 S.Ct. 1364 (1962). The Grand Jury's mission is "to bring to trial thos who may be guilty and clear the innocent." Martson's Inc. v. Strand, 114 Ariz. 260, 264, 560 P.S 778, 782, (1977). To do its job effectively, the Grand Jury must receive a fair and impartia presentation of the evidence. Crimmins v. Superior Court, 137 Ariz. 39, 41, 668, P.2d 882, 88 (1983); State v. Emery, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982).

Because defendants enjoy few procedural rights before the Grand Jury, grand juries must b unbiased and independent and must act "independently of either prosecutor or judges." Marston's, 114 Ariz. at 264, 560 P.2d at 782.

It is the responsibility of the Grand Jury to find probable cause, not the prosecutor. It is th exclusive responsibility of the Grand Jurors to find that a crime has been committed and that th person charged committed that crime. The Grand Jury's duty is not to find guilt beyond a reasonabl doubt, or to acquit. United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 618, 38 L.Ed. 2d 561 569 (1974). Its duty is to determine "whether probable cause exists to believe that a crime has bee committed and the individual being investigated was the one who committed it." State v. Baumann 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980).

Given the ex-parte nature of Grand Jury proceedings, Arizona courts have carefull circumscribed the prosecutor's role. See State v. Rocker, 113 Ariz. 450, 454, 556, P.2d 784, 78 (1976), disapproved on other grounds by State v. Jarzab, 123, Ariz. 308, 311, 599 P.2d 761, 76 (1979). The prosecutor who appears before a Grand Jury has a particularly weighty duty not t influence the jury because the defendant has no representation to watch out for his interests. *Id.*

The prosecutor's role before the Grand Jury is cogently set forth by Justice Berch of th Arizona Supreme Court in the case of Maretick v. Jarrett, 204 Ariz. 194, 197, 62 P.3d 120, 12 (2003). In Maretick, the court stated:

> The prosecutor's role before the Grand Jury is unique in our system. The prosecutor acts not simply as an advocate, but as a "minister of justice," who assists the jurors in their inquiry. See Ariz. R.Sup.Ct. 42, ER 3.8 cmt. Prosecutors bear a "particularly weighty duty not to influence the jury because the defendant has no representative to watch out for his interests" before the Grand Jury. State v. Rocker, 113 Ariz. 450, 454, 556 P.2d 784, 788 (1976), disapproved on other grounds, State v. Jarzab, 123 Ariz. 308, 311, 599 P.2d 761, 764 (1979). The prosecutor therefore "must not take

Arizona Supreme Court Judicial Vacancy Application
Maria Elena Cruz

ATTACHMENT "C"

4.

LAW OFFICE OF MARIA ELENA CRUZ, PLLC
MARIA ELENA CRUZ, BAR ID NO. 021639
152 SOUTH FIRST AVENUE
YUMA, ARIZONA 85364
TELEPHONE: 928/343-0700
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ATTORNEY FOR DEFENDANT

2006 NOV 24 PM 7:40

IN THE SUPERIOR COURT

COUNTY OF YUMA, STATE OF ARIZONA

STATE OF ARIZONA, **Plaintiff,** **vs.** **Defendant.**	**No. S1400CR0200600394** **DEFENDANT'S RESPONSE TO MOTION TO CONTINUE TRIAL** **Hon. Mark W. Reeves**

COMES NOW, the defendant, , by and through counsel undersigned, and hereby requests this honorable Court deny the State's Motion to Continue Trial. The reasons for this request are more fully set forth in the attached Memorandum of Points and Authorities.

DATED NOVEMBER 24th, 2006.

MARIA ELENA CRUZ
Counsel for Defendant

Copy of the foregoing delivered
November 27th, 2006, to:

Hon. Mark Reeves, Division II

Deann Sandry, Deputy County Attorney

By:

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On April 3, 2006, Mr. was arraigned on charges alleging a first time simple possession drug offense. From the time of the Final Management Conference held August 25, 2006 to present, Mr. has demanded his right to a speedy trial. The last day for trial has been calculated to be December 2, 2006.

On September 27, 2006, the matter was set for jury trial. Mr. owns and operates several companies located throughout the United States which employ about 300 persons. Since trial-setting, all interviews have been conducted and Mr. has aligned his personal affairs in such a fashion that he would be able to appear in Yuma for trial on November 28, 2006. The opening of a new division of one of his companies necessitates Mr. fly to Texas on December 6, 2006. Mr. does not expect to return from this planned business trip until approximately January 10, 2007.

At this juncture the State seeks a continuance of the jury trial based on the absence of a witness, Mr. , who was previously employed by the Yuma County Sheriff as a deputy. Mr. 's absence from the country has been known to the State since at least July of this year. Rather than bringing it to the Court's attention in a timely fashion, the State waited four months before filing its request to continue the trial. In fact, at the time this matter was set for trial, on September 27, 2006, the State knew of the unavailability of Mr. and that it would not be prepared to proceed to trial. Still, no action was taken by the State. Now, two weeks before trial, the State moves to continue the trial based on "extraordinary circumstances." The defense requests this Court deny the State's request and uphold the trial date as set.

LAW:

I. NO "EXTRAORDINARY CIRCUMSTANCES" EXIST IN THIS CASE TO JUSTIFY A CONTINUANCE

Rule 8.2(2) of the Arizona Rules of Criminal Procedure requires that persons released from custody be tried within 180 days from arraignment, barring any excluded periods. Rule 8.5, on the

other hand, provides continuances may be granted in cases where "extraordinary circumstances" exist.

In the case at bar, the matter is set to proceed to trial on Tuesday, November 28, 2006. Last week the State filed a motion requesting the trial be continued due to alleged "extraordinary circumstances." Specifically, the State has argued Mr. 's absence constitutes such circumstances. However, the mere fact that a State's necessary witness is out of the country does not, in and of itself, translate into an extraordinary circumstance necessitating a continuance of the trial.

A. **Availability of Witnesses and Prosecutor's Duty-*Heise***

In its motion, the State cites *State v. Heise*, 117 Ariz. 524, 573 P.2d 924 (1977) for the proposition that "the unavailability of a material witness constitutes extraordinary circumstances." The facts in *Heise* closely follow those presented in the instant case. In *Heise*, a case involving murder charges,, the trial date was initially set at a time when the medical examiner was available to testify. The medical examiner had "timely and dutifully notified the prosecutor of his vacation schedule and at that time the expected trial date did not interfere." *Id.* at 526. Subsequently the trial court, on its own motion continued the trial date to a time when the medical examiner was no longer available. The prosecutor failed to advise the Court of the newly created conflict. The Court explained, "[i]t was this failure on the part of the prosecutor's office which must be analyzed to determine whether "extraordinary circumstances" exist." *Id.* At 526. The Court reiterated the fact that "some discretion must be vested in the trial court to determine what are extraordinary circumstances under the particular facts of each case," and further declared that cases in which the trial court must choose between denying a State-requested continuance, which would result in dismissal of the case, and granting the continuance, but violating the defendant's rights to speedy trial are particularly difficult. *Id.* At 526. Nevertheless, the Court decided the issue as follows,

> "In the vast majority of cases, we would not fault the trial court for coming down on the side of granting a continuance. <u>However, when the sole reason the trial court is placed in this dilemma is the failure of the prosecutor to keep track of its trial schedule and availability of witnesses, we must reluctantly conclude that the trial</u>

court abused its discretion in finding the existence of extraordinary circumstances."

Id. at 526. (Emphasis added.)

The Court remanded *Heise* with instructions to dismiss prosecution.

Likewise, in *State v. Strickland*, 27 Ariz.App. 695, 558 P.2d 723, cited by the State for the proposition that a police officer's vacation may justify a continuance, although the Court did not reverse the trial court's ruling, it did find the continuance was erroneously granted. The *Strickland* Court highlighted the **prosecutor's duty** to ensure that trials are not scheduled during the prosecutor's or State witness' vacations. Here, the same principle applies when the prosecutor permitted a trial to be set at a time when she knew a material witness would be unavailable. In fact, the State knew of Mr. 's absence as early as the month of July.

B. *Lukezic*

In *Lukezic* the trial court continued the defendant's trial for reasons of unexpected illness of the trial judge. The Arizona Supreme Court stated in *Lukezic* that *Heise* was still good law and distinguished the facts of the two cases indicating, "that [in *Heise*] the delay was caused by a scheduling conflict which the prosecutor's office could have easily forseen." 117 Ariz. at 526, 573 P.2d at 926.

Although the State argues *Lukezic* approved seven factors to consider when deliberating on a requested continuance, no such factors are found in *State v. Lukezic*, 143 Ariz. 60, 691 P.2d 1088) or in any of the other three oases oited by the State in its motion. Assuming arguendo such factors are to be considered by the Court, the State offers no facts regarding factor number 5, "[w]hether the requesting party was diligent and acting in good faith," which would tend to support its request for a continuance. *See State's motion, p. 3, l. 23.* A review of the history of this case reveals no diligence or good faith on the part of the State. The State's failure to admit at trial setting that it would not be able to meet its burden at a trial on November 28, and its failure to advise the Court of this issue in a timely manner speak against a finding of extraordinary circumstances and warrants a denial of the State's motion.

C. **Sixth Amendment Right to Speedy Trial**

In weighing whether a defendant's rights to speedy trial per the Sixth Amendment has been violated, as articulated in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the courts must typically consider: 1) the length of the delay; 2) the reason for the delay; 3) whether the defendant has demanded a speedy trial; and 4) the prejudice to the defendant.

Here, the reason for the delay is not justified and the defendant has clearly demanded a speedy trial for the past four months.

CONCLUSION:

As in *Heise*, the sole reason this Court is now in a dilemma between denying a motion which will likely result in a dismissal of the case and granting the motion and running afoul of the defendant's rights to speedy trial is the failure of the prosecutor to keep track of her trial schedule and availability of witnesses. Therefore, as concluded by the Court in *Heise*, finding the existence of extraordinary circumstances and granting the State's motion would inevitably result in an abuse of the trial court's discretion.

DATED NOVEMBER 24th, 2006.

MARIA ELENA CRUZ
Counsel for Defendant

Copy of the foregoing delivered
November 27th, 2006, to:

Hon. Mark Reeves, Division II

Deann Sandry, Deputy County Attorney

By: _____

Arizona Supreme Court Judicial Vacancy Application
Maria Elena Cruz

ATTACHMENT "D"

75. There is no evidence that Exhibit 1 was inadvertently, accidentally, mistakenly, or negligently given to by , , or or any other "agent" of the .

76. The , knowing what they knew about the computer problem that doubled the profits in the Quick Books software for 2003, would have had to knowingly and intentionally given Mr. the subject document with an intent to deceive him.

77. , Plaintiff/Counter-Defendant's representative and owner, testified he has a history of buying failing restaurants, building them up and selling for a profit.

78. Neither the nor any of their agents have acted or testified in a manner consistent with an intent to be dishonest, deceptive, or fraudulent.

79. To the contrary, the overwhelming majority of the testimony has been about the honorable activities undertaken by the for the entirety of their lives and who have steadfastly helped those in need, while honoring traditional values of religion, country, military and family.

80. No actionable misrepresentation of any kind occurred prior to the signing of the subject lease drafted and written by or his attorney.

81. Defendants have failed to present any proof that Plaintiffs made any false or defamatory statements concerning Defendants.

CONCLUSIONS OF LAW

A. ASSAULT

"An actor is subject to liability to another for assault if he acts intending to cause a harmful or offensive contact with a person of the other or a third person, or an imminent apprehension of such contact, and the other is thereby put in such imminent apprehension." Restatement (Second) Torts § 21; Garcia v. U.S., 826 F.2d 806, 810 fn. 9 (9th Cir. 1987). In this cause of action, there is a lack of evidence that used a gun to cause a harmful or offensive contact. There is no evidence of an "imminent apprehension" of such contact or harm.

The factual basis of this finding is as follows:

On November 13, 2006, the evidence demonstrates that and business partner entered upon the property owned by the , and not subject to the lease. During the course of the conversation that ensued thereafter, asked and to get off her property.

The evidence showed that requested the two men to leave on more than one occasion.

The evidence proved (and testified) that the uninvited men did leave the residential premises of the , and walked back to the leased premises and waited outside the restaurant for about twenty (20) minutes until Sheriff's deputies arrived.

Allegations were made by and to Yuma County Sheriff's Officers that the two men had been assaulted by by her allegedly pointing a pistol at them.

The investigating Sheriff's Officers interviewed and , and found no evidence that could substantiate the allegations made by and his partner,

The evidence at trial is that has never owned a gun; has never fired a gun; and did not know of any pistol type gun existing in the home of the on November 13, 2006.

offered to allow the Sheriff's deputies to conduct a search of the premises while outside the home during the investigation on 11-13-06.

More likely than not, based upon the evidence at trial, did not possess a gun and did not have access to such a gun, nor did she know where one was located. Although there is evidence of a gun safe in the home, there is no evidence that knew what it contained. testified that the only gun in the home was in the safe and it was an antique rifle.

Plaintiffs have failed to meet the burden of proof required to establish liability for assault.

That is, there is insufficient evidence to establish preponderance.

B. DEFENSE TO PLAINTIFF'S ALLEGATION THAT THE BREACHED THE LEASE CONTRACT

stopped paying rent because of his claim that pointed a gun at him. He did not stop paying rent because of being given a false profit and loss statement, according to the testimony of . The sole basis for the decision to abandon the premises and stop payment of the November 2006 rent was the claim for assault.

Here, alleges that the sole basis for the allegation of breach of contract is that pointed a gun at him while he was on the residential property. However, Plaintiff cannot meet its burden to establish an assault as discussed above. Therefore, under the factual basis as alleged and stated in the deposition testimony by , and affirmed by in open court, the did not breach the lease by committing an assault. Therefore, the did not interfere with the allowed use under the Lease Agreement.

Thus, under all theories alleged to be the factual basis for the alleged breach of contract fails. The verdict must be for the on their counterclaim for breach of contract.

C. CLAIM THAT BREACHED THE LEASE CONTRACT

The lease is the contract. Counter-Defendant admitted to putting a stop payment on the November 2006 rent check, and Counsel for Counter-Defendant agreed that abandoned the property in November. No further payments we made or attempted to be made by from November 2006 until the time of trial. The lease was for ten (10) years.

A material breach occurs when a party who fails to do something required by the contract

which is so important to the contact that the breach defeats the very purpose of the contract. Here, . defeated the purpose of the contract by abandoning and failing to pay rent.

Damages are calculated in the subject contract. The damages were disclosed in Counterclaimants' Initial Rule 26.1 Disclosure Statement to be $737,800.00 for rent owed for the term of the lease.

The full measure of damages against Plaintiffs/Counterdefendants is found to be $737,800.00. Pursuant to the contract and A.R.S §12-341.01, the are entitled to attorney's fees and costs.

D. NEGLIGENT MISREPRESENTATION

In order to prevail on a claim for negligent misrepresentation, the Plaintiff must prove the following: "[o]ne who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." Standard Chartered PLC v. Price Waterhouse, 190 Ariz. 6, 29, 945, P.2d 317, 340 (App. 1996).

could not establish by way of any consistent testimony who, when, or how he came into possession of the profit and loss statement. He claimed, on the one hand, it induced him to sign the lease, and yet bill who he originally claimed gave him the profit and loss statement, was not in Yuma at the time : claims to have gained possession of it. There is inadequate proof of negligence on the part of Defendants for giving a document to that they deny ever seeing in his presence.

As a result, Plaintiffs cannot prevail on their claim of negligent misrepresentation.

E. INTENTIONAL MISREPRESENTATION

and have made allegations under the legal theory of intentional misrepresentation and setting forth factual assertions under all nine (9) elements required to establish a prima facie case of fraud – (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted upon by and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) his consequent and proximate injury. Apolito v. Johnson, 3 Ariz. App. 232, 236, 413 P.2d 291, 295 (App. 1966).

alleges that the intentionally misrepresented the financial success of , and erroneously alleges that the represented that could expect to make more than $290,000 per year in net income while leasing and operating did not meet its burden of proof to prove fraud. and did not make any false representations regarding the past success of . Any and all statements made by the were true when made. Additionally, does not have a cause of action for the alleged misrepresentations regarding future earning of

The deny that they have committed fraud. "It is fundamental in this jurisdiction that there can be no actionable fraud without concurrence of all the elements, thereof." Cullison v. Pride O'Texas Citrus Association, 88 Ariz. 257, 259, 355 p.2d 898, 899 (1960); Denbo v. Badger, 18 Ariz. App. 426, 428, 503 P.2d 384, 386 (App. 1972)

Plaintiffs have not met their burden of proof to prevail on its claim for intentional misrepresentation. At a minimum, Plaintiff had no right to "reasonably rely" upon an "unaudited profit and loss statement" as the sole basis for claiming fraud. The factual basis for this finding is as follows:

Plaintiff's Exhibit 1 is a document claimed by as having been represented to

him by , as a profit and loss statement for 2003 profits of

A copy of the document surfaced at the outset of the litigation and has served as a basis for allegations of fraud by Mr. against the for inducing him into signing the lease drafted.

testified in his deposition (Defendants' Exhibit 19) that gave him Exhibit 1, the profit and loss statement for 2003.

testified at his deposition and in trial that he knew what "unaudited" meant.

is legally blind. This is unrebutted.

No evidence exists that ever had the subject profit and loss statement in his possession at any time prior to the lease being signed.

No evidence exists that could operate the computer or computer program that was the subject of 's diagnosis and correction in early 2004.

At trial, testified contrary to his deposition by stating either , or gave him Exhibit 1.

At trial, testified he went through Exhibit 1 line by line with and made notes on the document prior to signing the lease. In closing argument, counsel for and argued that it could have been after the lease was signed that came into possession of Exhibit 1.

Under direct examination, Mr. testified that the profit and loss statement was reviewed *prior* to signing the lease and it induced him to wanting to lease the premises. However, under cross-examination, Mr. testified that he had no idea when he first reviewed the profit and loss statement.

The "line by line" conversation between and in occurred, Mr. "thinks" at the restaurant.

The were at their summer home in Pinetop, Arizona from late April 2004 through July 2004.

was not in Yuma, Arizona in May or June 2004 while would have been drafting the lease that was the subject of the meeting held in Pinetop between , , and in June 2004.

did not have a computer, fax machine, or printer in Pinetop in June 2004.

asked at the Pinetop meeting whether he needed any tax records or financial information on the restaurant for prior years. This is unrebutted by

rejected the offer for financial information on the subject restaurant while in the meeting that was held between , , , and . This was unrebutted.

The rejection of the offer for financial information including tax returns was accompanied by a statement by to the effect: "I'm going to run the business differently; I'm going to keep it open year-round." In fact, made changes to the establishment consistent with his statement that the restaurant would be run year-round.

and had always operated the restaurant between October/November through April of each year. It had always been a seasonal operation as opposed to a year-round business. The hot temperatures played a role in the cost of operating the business in the summer.

, , and all testified that at no time was there any reference to Exhibit 1 during the meeting in June 2004 in Pinetop. never claimed that it was subject of any conversation during these negotiations.

There is no testimony other than Mr. that any conversation or reference to the copy

of a P&L for 2003 ever occurred with anyone other than at the restaurant. denied any conversation with ! on the contents of Exhibit 1. It is highly unlikely that any such meeting ever occurred prior to signing the lease, since the print date is 5/17/04 and ! . was never in Yuma during that period of time.

As such, Plaintiff's claim of intentional misrepresentation must fail.

F. **DEFAMATION**

Defendants have failed to present any proof that Plaintiffs made any false or defamatory statements concerning Defendants.

As such, Counterclaimants' claim of defamation against Plaintiffs must fail.

Dated this 14th day of January, 2011.

HON. MARIA ELENA CRUZ
JUDGE OF THE SUPERIOR COURT

Copies of the foregoing mailed
this 18th day of January, 2011, to:

Lynn Fuzz
~~JEFFREY MANGIS~~, Clerk of the Superior Court

By _____, Deputy Clerk
ELIZABETH ALBARRAN

ATTACHMENT "E"

MEMORANDUM DECISION

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Michael S. Catlett joined.

C R U Z, Judge:

¶1 _____ appeals the superior court's denial of special action jurisdiction over his previously-litigated claims against the City of _____, _____, and _____ (collectively "Appellees"). We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2019, Judge _____ issued an injunction against harassment ("Injunction") against _____as a result of his harassment of a coworker at their mutual place of employment, First Transit. The Injunction was upheld after a hearing on the merits and _____appealed to the Maricopa County Superior Court where he fully litigated the matter.

¶3 Since May 2020, _____ filed at least two other actions with the superior court relating to the same Injunction. Both were removed to federal court, fully litigated, and dismissed with prejudice. *See Rynn v. First*

Transit, Inc., 2:20-cv-01309-JJT, 2021 WL 3209665 (D. Ariz. 2021); *see also Rynn v. First Transit, Inc.*, 2:21-cv-01755-DWL, 2021 WL 6050312 (D. Ariz. 2021).

¶4 Then, in 2022, _____returned to the superior court belatedly seeking special action relief from its rulings in the appeal. The superior court denied special action jurisdiction.

¶5 _____timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(1).

DISCUSSION

¶6 As a preliminary matter we note that _____opening brief fails to comply with Arizona Rule of Civil Appellate Procedure ("ARCAP") 13. ARCAP 13(a)(7)(A) requires an argument that includes "contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the [] record." "We consider waived those arguments not supported by adequate explanation, citations to the record, or authority." *In re Aubuchon*, 233 Ariz. 62, 65, ¶6 (2013).

¶7 _____identifies over thirteen issues for review on appeal, but his arguments are not supported by adequate explanation, citations to the record, or citations to relevant authority. Additionally, _____arguments rely on factual assertions not found in the record.

¶8 To the extent that _____opening brief can be read to appeal the superior court's denial of special action jurisdiction over his belated filing, we hold the superior court did not abuse its discretion. "A court's decision to decline or accept special-action jurisdiction is discretionary." *Stapert v. Ariz. Bd. of Psychologist Examiners*, 210 Ariz. 177, 182 (App. 2005). "If the superior court declines jurisdiction of the special action and does not rule on the merits, we determine only whether the court abused its discretion in declining jurisdiction." *Files v. Bernal*, 200 Ariz. 64, 65 (2001). "Generally, a court abuses its discretion where the record fails to provide substantial support for its decision, or the court commits an error of law in reaching the decision." *Id.*

¶9 The superior court denied special action jurisdiction, explaining there was no legal basis for the action and that city judges enjoy absolute judicial immunity in judicial acts.

¶10 Like in his briefs on appeal, _____failed to state discernible claims in his petition for special action before the superior court. To the

extent the superior court denied Rynn's petition for failing to state an appropriate ground for relief under Arizona Rule of Civil Procedure 60 ("Rule 60"), that ruling was not an abuse of discretion. Rule 60 lists the grounds for relief from judgment. Depending on the grounds alleged, Rule 60(b) motions must be made within a reasonable time or "no more than 6 months after the entry of the judgment [...]." _____special action was filed three years after the Injunction was issued. All potentially applicable grounds for relief in Rule 60 are now time barred except for that of relief from a void judgment.

¶11 A judgment is void when the issuing court lacks jurisdiction. *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 74, ¶19 (App. 2004). _____has not demonstrated, or even argued, that the city court lacked jurisdiction to entertain the matter of the injunction against harassment. The superior court did not abuse its discretion in denying the motion for special action on this basis.

¶12 The superior court further noted that any claims against Judge _____related to his issuance of the Injunction were barred by the doctrine of judicial immunity because his entry of the injunction was plainly a judicial act. "[T]he judiciary, in carrying out its functions, is entitled to absolute immunity." *Acevedo by Acevedo v. Pima County Adult Probation Dept.*, 142 Ariz. 319, 322 (1984). Therefore, the superior court did

not abuse its discretion when it also denied special action jurisdiction on this basis.

¶13 The City of _____, Judge _____, _____, and _____all request an award of attorneys' fees under A.R.S. § 12-349. Attorneys' fees may be imposed against a party who brings a claim without substantial justification. A.R.S. § 12-349. As defined in the statute, a claim lacks substantial justification when it is both "groundless" and "not made in good faith." A.R.S. § 12-349(F). "While groundless is determined objectively, bad faith is a subjective determination." *Takieh v. O'Meara*, 252 Ariz. 51, 61, ¶37 (App. 2021). "A claim is groundless if the proponent can present no rational argument based upon the evidence or law in support of that claim." *Id.* (citation and internal quotation marks omitted).

¶14 _____appeal of the special action is groundless and not made in good faith. As discussed above, _____provides no legal basis for his pursuit of special action relief years after a final judgment was entered and appealed. _____has fully litigated his claims related to the Injunction and each has been finally determined. *See* _____. _____continuous appeals without a legal basis cannot be considered to be made in good faith. Therefore, we grant Appellees' request for attorney's fees upon compliance with ARCAP 21.

CONCLUSION

¶15 We affirm.

Judicial Reports

Commission number votes may vary based upon abstentions. Voting abstentions are procedural matters within the Commission and should not be viewed in any way as a negative factor with respect to a judge's performance.

Apache, Coconino, La Paz, Mohave, Navajo, Yavapai and Yuma Voters Only

Hon. Maria Elena Cruz
Court of Appeals Division I
Appointed: 2017

100% of the Commission Voted Judge Cruz MEETS Judicial Performance Standards
33 Commissioners Voted 'Meets'
0 Commissioners Voted 'Does Not Meet'

☐ Show Surveys from Prior Years

2020	**Attorney Surveys** Distributed: 464 Returned: 49 **Score (See Footnote)**	**Superior Court Judge Surveys** Distributed: 119 Returned: 40 **Score (See Footnote)**
Legal Ability	86%	97%
Integrity	100%	100%
Communication	79%	n/a
Temperament	81%	n/a
Admin Performance	93%	97%

FOOTNOTE:
Judges are evaluated on their judicial performance midway through their term and prior to their retention election. Beginning in 2022, their survey evaluation scores include midterm scores and retention scores. Newly appointed judges serve a two-year term and are evaluated prior to their retention election on their retention scores. The score is the percentage of all evaluators who rated the judge "superior", "very good", or "satisfactory" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials or no survey responses were returned). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

Judicial Reports

Commission number votes may vary based upon abstentions. Voting abstentions are procedural matters within the Commission and should not be viewed in any way as a negative factor with respect to a judge's performance.

Arizona Commission on Judicial Performance Review

Hon. Maria Elena Cruz **2020 Attorney Survey Responses**

Key: **SU** = Superior **VG** = Very Good **SA** = Satisfactory **PO** = Poor **UN** = Unsatisfactory

	SU		VG		SA		PO		UN		Mean	Total
1. Legal Ability	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.		
1. Legal reasoning ability	13	48%	9	33%	2	7%	1	4%	2	7%	3.11	27
2. Knowledge of law	12	43%	10	36%	2	7%	3	11%	1	4%	3.04	28
3. Decisions based on laws and facts	13	46%	9	32%	2	7%	3	11%	1	4%	3.07	28
4. Clearly written, legally supported decisions	13	46%	9	32%	2	7%	3	11%	1	4%	3.07	28
Category Total	**51**	**46%**	**37**	**33%**	**8**	**7%**	**10**	**9%**	**5**	**5%**	**3.07**	**111**
2. Integrity												
5. Basic fairness and impartiality	14	64%	4	18%	4	18%	0	0%	0	0%	3.45	22
6. Equal treatment regardless of race	11	79%	0	0%	3	21%	0	0%	0	0%	3.57	14
7. Equal treatment regardless of gender	11	79%	0	0%	3	21%	0	0%	0	0%	3.57	14
8. Equal treatment regardless of religion	10	77%	0	0%	3	23%	0	0%	0	0%	3.54	13
9. Equal treatment regardless of national origin	10	77%	0	0%	3	23%	0	0%	0	0%	3.54	13
10. Equal treatment regardless of disability	10	83%	0	0%	2	17%	0	0%	0	0%	3.67	12
11. Equal treatment regardless of age	10	77%	0	0%	3	23%	0	0%	0	0%	3.54	13
12. Equal treatment regardless of sexual orientation	10	83%	0	0%	2	17%	0	0%	0	0%	3.67	12
13. Equal treatment regardless of economic status	11	85%	0	0%	2	15%	0	0%	0	0%	3.69	13

Category Total	**97**	**77%**	**4**	**3%**	**25**	**20%**	**0**	**0%**	**0**	**0%**	**3.57**	**126**
3. Communication												
14. Attentiveness	10	40%	5	20%	6	24%	3	12%	1	4%	2.80	25
15. Deameanor in communications with counsel	9	41%	2	9%	6	27%	4	18%	1	5%	2.64	22
16. Appropriate restrictions on counsel during argument	1	33%	2	67%	0	0%	0	0%	0	0%	3.33	3
17. Relevant questions	11	44%	4	16%	4	16%	5	20%	1	4%	2.76	25
18. Preparation for oral argument	9	41%	3	14%	5	23%	4	18%	1	5%	2.68	22
Category Total	**40**	**41%**	**16**	**16%**	**21**	**22%**	**16**	**16%**	**4**	**4%**	**2.74**	**97**
4. Temperament												
19. Dignified	11	52%	2	10%	4	19%	4	19%	0	0%	2.95	21
21. Courteous	11	52%	2	10%	5	24%	3	14%	0	0%	3.00	21
22. Patient	11	52%	2	10%	4	19%	2	10%	2	10%	2.86	21
23. Conduct that promotes confidence in the court and judge's ability	11	52%	2	10%	3	14%	3	14%	2	10%	2.81	21
Category Total	**44**	**52%**	**8**	**10%**	**16**	**19%**	**12**	**14%**	**4**	**5%**	**2.90**	**84**
5. Admin Performance												
24. Promptness in making rulings and rendering decisions	13	48%	5	19%	7	26%	2	7%	0	0%	3.07	27
Category Total	**13**	**48%**	**5**	**19%**	**7**	**26%**	**2**	**7%**	**0**	**0%**	**3.07**	**27**

Judicial Reports

Commission number votes may vary based upon abstentions. Voting abstentions are procedural matters within the Commission and should not be viewed in any way as a negative factor with respect to a judge's performance.

Arizona Commission on Judicial Performance Review

Hon. Maria Elena Cruz **2020 Superior Court Judge Survey Responses**

Key: **SU** = Superior **VG** = Very Good **SA** = Satisfactory **PO** = Poor **UN** = Unsatisfactory

	SU		VG		SA		PO		UN		Mean	Total	No Resp
1. Legal Ability	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal reasoning ability	27	82%	4	12%	1	3%	1	3%	0	0%	3.73	33	0
2. Knowledge of the law	28	82%	5	15%	0	0%	1	3%	0	0%	3.76	34	0
3. Decisions based on law and facts	27	82%	4	12%	1	3%	1	3%	0	0%	3.73	33	0
4. Clearly written, legally supported decisions	26	81%	4	13%	1	3%	1	3%	0	0%	3.72	32	0
Category Total	**108**	**82%**	**17**	**13%**	**3**	**2%**	**4**	**3%**	**0**	**0%**	**3.73**	**132**	
2. Integrity													
5. Basic fairness and impartiality	22	96%	1	4%	0	0%	0	0%	0	0%	3.96	23	0
6. Equal treatment regardless of race	18	95%	1	5%	0	0%	0	0%	0	0%	3.95	19	0
7. Equal treatment regardless of gender	18	95%	1	5%	0	0%	0	0%	0	0%	3.95	19	0
8. Equal treatment regardless of religion	17	94%	1	6%	0	0%	0	0%	0	0%	3.94	18	0
9. Equal treatment regardless of national origin	18	95%	1	5%	0	0%	0	0%	0	0%	3.95	19	0
10. Equal treatment regardless of disability	17	94%	1	6%	0	0%	0	0%	0	0%	3.94	18	0
11. Equal treatment regardless of age	17	94%	1	6%	0	0%	0	0%	0	0%	3.94	18	0
12. Equal treatment regardless of sexual orientation	17	94%	1	6%	0	0%	0	0%	0	0%	3.94	18	0

13. Equal treatment regardless of economic status	18	95%	1	5%	0	0%	0	0%	0	0%	3.95	19	0
Category Total	**162**	**95%**	**9**	**5%**	**0**	**0%**	**0**	**0%**	**0**	**0%**	**3.95**	**171**	
3. Admin Performance													
14. Promptness in making rulings and rendering decisions	19	61%	6	19%	5	16%	1	3%	0	0%	3.39	31	0
Category Total	**19**	**61%**	**6**	**19%**	**5**	**16%**	**1**	**3%**	**0**	**0%**	**3.39**	**31**	

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW **Appellate Courts**

Name of Judge: **Total Surveys: 158** **Assignment: Appellate** **Cycle: 2023 Mid-term Review**

APP-12

Hon. Maria E. Cruz	**ATTORNEY**					**50**	**29**	**PEER JUDGE/JUSTICE**					**15**		**SUP COURT JUDGE**					**53**		**STAFF**					**9**	**2**
	SU	**VG**	**SA**	**PO**	**UN**	**Valid**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Total**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Total**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Total**	**Mean**
Section I: Legal Ability	**30**	**10**	**3**	**5**	**4**	**52**	**3.1**	**15**	**1**	**0**	**0**	**0**	**15**	**4.0**	**32**	**9**	**8**	**1**	**0**	**49**	**3.5**							
Legal reasoning ability	30	10	4	4	4	52	3.1	14	1	0	0	0	15	3.9	32	8	8	1	0	49	3.4							
Knowledge of law	30	10	3	6	3	52	3.1	14	1	0	0	0	15	3.9	32	9	7	1	0	49	3.5							
Decisions based on law and facts	30	10	3	4	5	52	3.1	15	0	0	0	0	15	4.0	31	9	9	0	0	49	3.4							
Clearly written, legally supported decisions	30	11	2	5	4	52	3.1	15	0	0	0	0	15	4.0	33	9	8	0	0	50	3.5							
Section II: Integrity	**20**	**4**	**0**	**1**	**1**	**27**	**3.6**	**15**	**0**	**0**	**0**	**0**	**15**	**4.0**	**16**	**3**	**2**	**0**	**0**	**21**	**3.7**	**7**	**2**	**1**	**1**	**0**	**10**	**3.5**
Basic fairness and impartiality	28	9	2	4	3	46	3.2	15	0	0	0	0	15	4.0	29	8	3	0	0	40	3.7	8	1	1	1	0	11	3.5
Equal treatment regardless of race	21	4	0	1	1	27	3.6	15	0	0	0	0	15	4.0	17	3	2	0	0	22	3.7	7	2	1	1	0	11	3.4
Equal treatment regardless of gender	23	4	1	0	2	30	3.5	15	0	0	0	0	15	4.0	17	3	2	0	0	22	3.7	7	2	1	1	0	11	3.4
Equal treatment regardless of religion	18	3	0	0	1	22	3.7	15	0	0	0	0	15	4.0	16	3	2	0	0	21	3.7	7	2	1	0	0	10	3.6
Equal treatment regardless of national origin	19	4	0	0	1	24	3.7	15	0	0	0	0	15	4.0	17	3	2	0	0	22	3.7	7	2	1	0	0	10	3.6
Equal treatment regardless of disability	17	4	0	0	0	21	3.8	15	0	0	0	0	15	4.0	16	2	1	0	0	19	3.8	7	1	1	0	0	9	3.7
Equal treatment regardless of age	20	5	0	0	1	26	3.7	15	0	0	0	0	15	4.0	17	3	2	0	0	22	3.7	7	2	1	1	0	11	3.4
Equal treatment regardless of sexual orientation	17	3	0	0	0	20	3.9	15	0	0	0	0	15	4.0	16	3	2	0	0	21	3.7	7	2	1	0	0	10	3.6
Equal treatment regardless of economic status	19	4	0	0	2	25	3.5	15	0	0	0	0	15	4.0	17	3	2	0	0	22	3.7	7	2	1	1	0	11	3.4
Written decision free from personal bias															2	1	0	0	0	3	3.7							
Section III: Communication Skills	**14**	**5**	**3**	**2**	**0**	**24**	**3.3**	**15**	**0**	**0**	**0**	**0**	**15**	**4.0**								**4**	**3**	**1**	**1**	**0**	**9**	**3.1**
Attentiveness	19	7	3	2	0	31	3.4	15	0	0	0	0	15	4.0														
Demeanor in communications with counsel	17	6	4	1	0	28	3.4																					
Appropriate restrictions on counsel during argument	2	0	0	0	0	2	4.0	15	0	0	0	0	15	4.0														
Relevant questions	17	6	3	3	1	30	3.2	15	0	0	0	0	15	4.0														
Preparation for oral argument	17	5	3	3	0	28	3.3																					
Clear and logical communications																						4	3	1	1	0	9	3.1
Section IV: Judicial temperament	**20**	**4**	**4**	**2**	**0**	**29**	**3.5**	**15**	**0**	**0**	**0**	**0**	**15**	**4.0**								**7**	**2**	**1**	**1**	**0**	**11**	**3.4**
Understanding and compassion																						6	1	1	1	0	9	3.3
Dignified	21	3	4	1	0	29	3.5	15	0	0	0	0	15	4.0								7	2	1	1	0	11	3.4
Courteous	21	3	4	1	0	29	3.5	15	0	0	0	0	15	4.0								7	2	1	1	0	11	3.4
Patient	20	4	5	0	0	29	3.5	15	0	0	0	0	15	4.0								7	2	1	1	0	11	3.4
Conduct that promotes public confidence in the court	18	5	1	4	0	28	3.3	15	0	0	0	0	15	4.0								7	2	1	1	0	11	3.4
Section V: Administrative Performance	**28**	**11**	**6**	**2**	**1**	**48**	**3.3**	**15**	**0**	**0**	**0**	**0**	**15**	**4.0**	**19**	**9**	**7**	**1**	**0**	**36**	**3.3**	**5**	**1**	**1**	**0**	**0**	**8**	**3.4**
Punctual in conducting proceedings																						5	0	2	1	0	8	3.1
Maintains proper control over courtroom																						4	1	1	0	0	6	3.5
Prepared for proceedings								15	0	0	0	0	15	4.0								5	1	1	0	0	7	3.6
Respectful treatment of staff																						7	1	1	1	0	10	3.4
Cooperation with peers																						4	3	1	0	0	8	3.4
Cooperation with staff																						6	2	1	0	0	9	3.6
Efficient management of calendar																						4	2	1	0	0	7	3.4
Promptness in making rulings and rendering decisions	28	11	6	2	1	48	3.3	15	0	0	0	0	15	4.0	19	9	7	1	0	36	3.3							
Works effectively with other judges								15	0	0	0	0	15	4.0														
Works effectively with other court personnel								15	0	0	0	0	15	4.0														
Effective handling of ongoing workload								15	0	0	0	0	15	4.0														

UN=Unacceptable, PO=Poor,
SA=Satisfactory, VG=Very Good,
SU=Superior

Category summaries are averages and may not add up due to rounding.

Surveys were distributed to court users from 09/2019 - 05/2023

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW — **Appellate Courts**

Name of Judge: **Total Surveys: 158** **Assignment: Appellate** **Cycle: 2023 Mid-term Review**

APP-12	ATTORNEY					50 29	PEER JUDGE/JUSTICE					15	SUP COURT JUDGE					53	STAFF					9 2
Hon. Maria E. Cruz	**SU**	**VG**	**SA**	**PO**	**UN**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Mean**	**SU**	**VG**	**SA**	**PO**	**UN**	**Mean**
Section I: Legal Ability	**58%**	**20%**	**6%**	**9%**	**8%**	**3.1**	**97%**	**3%**	**0%**	**0%**	**0%**	**4.0**	**65%**	**18%**	**16%**	**1%**	**0%**	**3.5**						
Legal reasoning ability	58%	19%	8%	8%	8%	3.1	93%	7%	0%	0%	0%	3.9	65%	16%	16%	2%	0%	3.4						
Knowledge of law	58%	19%	6%	12%	6%	3.1	93%	7%	0%	0%	0%	3.9	65%	18%	14%	2%	0%	3.5						
Decisions based on law and facts	58%	19%	6%	8%	10%	3.1	100%	0%	0%	0%	0%	4.0	63%	18%	18%	0%	0%	3.4						
Clearly written, legally supported decisions	58%	21%	4%	10%	8%	3.1	100%	0%	0%	0%	0%	4.0	66%	18%	16%	0%	0%	3.5						
Section II: Integrity	**76%**	**17%**	**1%**	**2%**	**5%**	**3.6**	**100%**	**0%**	**0%**	**0%**	**0%**	**4.0**	**77%**	**15%**	**8%**	**0%**	**0%**	**3.7**	**68%**	**17%**	**10%**	**5%**	**0%**	**3.5**
Basic fairness and impartiality	61%	20%	4%	9%	7%	3.2	100%	0%	0%	0%	0%	4.0	73%	20%	8%	0%	0%	3.7	73%	9%	9%	9%	0%	3.5
Equal treatment regardless of race	78%	15%	0%	4%	4%	3.6	100%	0%	0%	0%	0%	4.0	77%	14%	9%	0%	0%	3.7	64%	18%	9%	9%	0%	3.4
Equal treatment regardless of gender	77%	13%	3%	0%	7%	3.5	100%	0%	0%	0%	0%	4.0	77%	14%	9%	0%	0%	3.7	64%	18%	9%	9%	0%	3.4
Equal treatment regardless of religion	82%	14%	0%	0%	5%	3.7	100%	0%	0%	0%	0%	4.0	76%	14%	10%	0%	0%	3.7	70%	20%	10%	0%	0%	3.6
Equal treatment regardless of national origin	79%	17%	0%	0%	4%	3.7	100%	0%	0%	0%	0%	4.0	77%	14%	9%	0%	0%	3.7	70%	20%	10%	0%	0%	3.6
Equal treatment regardless of disability	81%	19%	0%	0%	0%	3.8	100%	0%	0%	0%	0%	4.0	84%	11%	5%	0%	0%	3.8	78%	11%	11%	0%	0%	3.7
Equal treatment regardless of age	77%	19%	0%	0%	4%	3.7	100%	0%	0%	0%	0%	4.0	77%	14%	9%	0%	0%	3.7	64%	18%	9%	9%	0%	3.4
Equal treatment regardless of sexual orientation	85%	15%	0%	0%	0%	3.9	100%	0%	0%	0%	0%	4.0	76%	14%	10%	0%	0%	3.7	70%	20%	10%	0%	0%	3.6
Equal treatment regardless of economic status	76%	16%	0%	0%	8%	3.5	100%	0%	0%	0%	0%	4.0	77%	14%	9%	0%	0%	3.7	64%	18%	9%	9%	0%	3.4
Written decision free from personal bias													67%	33%	0%	0%	0%	3.7						
Section III: Communication Skills	**61%**	**20%**	**11%**	**8%**	**1%**	**3.3**	**100%**	**0%**	**0%**	**0%**	**0%**	**4.0**							**44%**	**33%**	**11%**	**11%**	**0%**	**3.1**
Attentiveness	61%	23%	10%	6%	0%	3.4	100%	0%	0%	0%	0%	4.0												
Demeanor in communications with counsel	61%	21%	14%	4%	0%	3.4																		
Appropriate restrictions on counsel during argument	100%	0%	0%	0%	0%	4.0	100%	0%	0%	0%	0%	4.0												
Relevant questions	57%	20%	10%	10%	3%	3.2	100%	0%	0%	0%	0%	4.0												
Preparation for oral argument	61%	18%	11%	11%	0%	3.3																		
Clear and logical communications																			44%	33%	11%	11%	0%	3.1
Section IV: Judicial temperament	**70%**	**13%**	**12%**	**5%**	**0%**	**3.5**	**100%**	**0%**	**0%**	**0%**	**0%**	**4.0**							**64%**	**17%**	**9%**	**9%**	**0%**	**3.4**
Understanding and compassion																			67%	11%	11%	11%	0%	3.3
Dignified	72%	10%	14%	3%	0%	3.5	100%	0%	0%	0%	0%	4.0							64%	18%	9%	9%	0%	3.4
Courteous	72%	10%	14%	3%	0%	3.5	100%	0%	0%	0%	0%	4.0							64%	18%	9%	9%	0%	3.4
Patient	69%	14%	17%	0%	0%	3.5	100%	0%	0%	0%	0%	4.0							64%	18%	9%	9%	0%	3.4
Conduct that promotes public confidence in the court	64%	18%	4%	14%	0%	3.3	100%	0%	0%	0%	0%	4.0							64%	18%	9%	9%	0%	3.4
Section V: Administrative Performance	**58%**	**23%**	**13%**	**4%**	**2%**	**3.3**	**100%**	**0%**	**0%**	**0%**	**0%**	**4.0**	**53%**	**25%**	**19%**	**3%**	**0%**	**3.3**	**64%**	**18%**	**15%**	**4%**	**0%**	**3.4**
Punctual in conducting proceedings																			63%	0%	25%	13%	0%	3.1
Maintains proper control over courtroom																			67%	17%	17%	0%	0%	3.5
Prepared for proceedings							100%	0%	0%	0%	0%	4.0							71%	14%	14%	0%	0%	3.6
Respectful treatment of staff																			70%	10%	10%	10%	0%	3.4
Cooperation with peers																			50%	38%	13%	0%	0%	3.4
Cooperation with staff																			67%	22%	11%	0%	0%	3.6
Efficient management of calendar																			57%	29%	14%	0%	0%	3.4
Promptness in making rulings and rendering decisions	58%	23%	13%	4%	2%	3.3	100%	0%	0%	0%	0%	4.0	53%	25%	19%	3%	0%	3.3						
Works effectively with other judges							100%	0%	0%	0%	0%	4.0												
Works effectively with other court personnel							100%	0%	0%	0%	0%	4.0												
Effective handling of ongoing workload							100%	0%	0%	0%	0%	4.0												

UN=Unacceptable, PO=Poor,
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